

Message Text

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TO AMEMBASSY ANKARA IMMEDIATE

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E.O. 11652: N/A

TAGS: CASC, TU

SUBJECT: AMERICAN PRISONERS IN TURKEY

REF: STATE 156842

1. DEPT COUNSELOR NIMETZ CALLED IN TURKISH AMBASSADOR ESENBEL JUNE 30 TO GIVE HIM FORMAL REPLY TO TURKISH GOVERNMENT'S SUGGESTION THAT THE U.S. EITHER ADHERE TO THE EUROPEAN CONVENTION ON THE INTERNATIONAL VALIDITY OF CRIMINAL JUDGMENTS OR, ALTERNATIVELY, NEGOTIATE A BILATERAL TREATY BASED ON THE CONVENTION (REFTEL). NIMETZ TOLD THE AMBASSADOR THAT THE U.S. COULD NOT RPT NOT ADHERE TO THE CONVENTION IN ITS PRESENT FORM, BECAUSE OF U.S. CONSTITUTIONAL AND LEGAL REQUIREMENTS. HOWEVER, NIMETZ SAID THE U.S. BELIEVED THAT WE COULD DEVELOP A MUTUALLY ACCEPTABLE BILATERAL TREATY, BASED ON THE CONVENTION, WITH LIMITED MODIFICATIONS TO MEET U.S. CONSTITUTIONAL AND LEGAL REQUIREMENTS, BUT RETAINING AS MUCH AS POSSIBLE OF THE LIMITED OFFICIAL USE

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LANGUAGE OF THE CONVENTION. DEPTOFF ADDED THAT UNDER U.S. LAW A PRISONER TRANSFER ARRANGEMENT MUST TAKE THE FORM OF A TREATY, WHICH WILL HAVE TO BE SUBMITTED TO THE SENATE FOR APPROVAL. NIMETZ THEN GAVE ESENBEL A COPY OF HIS TALKING POINTS (SEE PARA 5 FOR TEXT).

2. NIMETZ TOLD ESENBEL THAT HE HAD BRIEFED CONGRESSMAN

SAWYER (R-MICH) ON THESE DEVELOPMENTS ON JUNE 29. SAWYER HAD BEEN GENERALLY PLEASED, BUT HAD STRESSED THAT HE WOULD LIKE TO SEE THE NEGOTIATIONS CONCLUDED "IN A MATTER OF WEEKS." SAWYER AND 52 COLLEAGUES HAVE SENT A LETTER (SEPTEL) TO THE PRESIDENT URGING CONCLUSION OF A PRISONER TRANSFER TREATY. OUR BEST RESPONSE, COMMENTED NIMETZ, WOULD BE TO ANNOUNCE THAT NEGOTIATIONS WILL BEGIN IN THE NEAR FUTURE. HE HANDED ESENBEL THE DRAFT TEXT OF AN ANNOUNCEMENT (PARA 6 BELOW) WHICH THE DEPARTMENT PROPOSED TO MAKE IN A ROUTINE MANNER, HOPEFULLY AS SOON AS CONGRESS RETURNS AFTER THE JULY 4 RECESS.

3. ESENBEL WELCOMED THE U.S. RESPONSE AND UNDERTOOK TO REPORT PROMPTLY TO ANKARA. HE NOTED THAT THE TURKISH PRESS HAD CARRIED A REPORT THAT "NEGOTIATIONS" WERE ALREADY UNDERWAY BETWEEN THE MFA AND THE AMERICAN EMBASSY RE A PRISONER TRANSFER TREATY. ESENBEL INTERPRETED THIS PRESS REPORT AS A SIGNAL THAT THE MFA IS SYMPATHETIC TO NEGOTIATING A BILATERAL TREATY BASED ON THE CONVENTION. HE SAID THE GOT PROBABLY WOULD NOT RPT NOT BE INTERESTED IN MAKING A JOINT ANNOUNCEMENT BUT WELCOMED THE OPPORTUNITY TO REVIEW THE DRAFT TEXT OF ANNOUNCEMENT WHICH THE DEPARTMENT PROPOSED TO MAKE.

4. IN CLOSING, ESENBEL COMMENTED THAT HE HAD BEEN CONCERNED BY HIS RECENT EXCHANGE OF CORRESPONDENCE WITH CONGRESS-LIMITED OFFICIAL USE

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MAN SAWYER. HE FEARED THAT ADVERSE PUBLICITY IN THE PRESS RESULTING FROM THE CONGRESSMAN'S STATEMENTS ON THE RECORD COULD MAKE IT MORE DIFFICULT FOR THE GOT TO CONCLUDE A PRISONER TRANSFER TREATY. NEVERTHELESS, ESENBEL WAS HOPEFUL THINGS WERE NOW ON THE RIGHT TRACK.

5. TEXT OF TALKING POINTS USED BY NIMETZ: BEGIN TEXT

-- WE DEEPLY APPRECIATE YOUR SUGGESTIONS REGARDING THE EUROPEAN CONVENTION OR A BILATERAL TREATY BASED ON THE CONVENTION AS A MECHANISM FOR RESOLVING THE QUESTION OF AMERICAN CITIZENS IMPRISONED IN TURKEY. WE BELIEVE THAT THESE ARE IMPORTANT AND CONSTRUCTIVE IDEAS.

-- LEGAL ADVISORS FROM THE DEPARTMENTS OF STATE AND JUSTICE HAVE REVIEWED IN DETAIL THE TERM; OF THE CONVENTION, IN LIGHT OF OUR CONSTITUTIONAL AND LEGAL REQUIREMENTS. THEY HAVE BEEN FORCED TO CONCLUDE THAT WE CANNOT ADHERE TO THE EUROPEAN CONVENTION IN ITS PRESENT FORM BECAUSE OF U.S. CONSTITUTIONAL AND LEGAL REQUIREMENTS.

-- HOWEVER, WE BELIEVE THAT WITH RELATIVELY LIMITED

CHANGES, WE COULD DEVELOP A MUTUALLY ACCEPTABLE BILATERAL TREATY, BASED UPON THE CONVENTION, BUT SIMPLIFIED AND LESS SWEEPING IN SCOPE.

-- SOME MODIFICATIONS IN THE CONVENTION WOULD BE NECESSARY TO SATISFY U.S. CONSTITUTIONAL AND LEGAL REQUIREMENTS. OUR LEGAL ADVISORS ARE PREPARING A DRAFT WHICH SEEKS TO MAKE THESE MODIFICATIONS WHILE RETAINING AS MUCH AS POSSIBLE OF THE CONVENTION'S LANGUAGE AND STRUCTURE. THE PRINCIPAL MODIFICATIONS WOULD INCLUDE:

1) ADDITION OF A PROVISION FOR OBTAINING THE CONSENT OF THE PRISONER PRIOR TO THE TRANSFER;

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2) REPLACEMENT OF THE "SUBSTITUTE SENTENCING" FEATURE OF THE CONVENTION WITH A SIMPLER COMMITMENT TO ENFORCE THE SENTENCE IMPOSED BY THE SENDING COUNTRY;

3) REDUCTION IN THE SCOPE OF SANCTIONS COVERED, ALONG THE LINES ENVISAGED BY RESERVATIONS D AND F OF APPENDIX I TO THE EUROPEAN CONVENTION; AND

4) GENERAL REFINING OF THE LANGUAGE THROUGHOUT TO REFLECT THE FACT THE NEW AGREEMENT IS A BILATERAL RATHER THAN MULTILATERAL ARRANGEMENT.

-- WITH YOUR CONCURRENCE, WE ARE PREPARED TO ANNOUNCE PUBLICLY THAT THE U.S. AND TURKEY WILL BEGIN NEGOTIATIONS ON A PRISONER TRANSFER TREATY IN THE NEAR FUTURE. END TEXT

6. DRAFT OF PROPOSED DEPARTMENT ANNOUNCEMENT: BEGIN TEXT THE UNITED STATES AND TURKEY HAVE AGREED TO COMMENCE NEGOTIATIONS AT AN EARLY DATE ON A PRISONER TRANSFER TREATY, PROVIDING FOR THE RETURN OF CITIZENS IMPRISONED IN ONE STATE TO THEIR OWN COUNTRY TO SERVE OUT THE REMAINDER OF THE SENTENCES IMPOSED. THE TREATY WILL BE BASED UPON THE EUROPEAN CONVENTION ON THE INTERNATIONAL VALIDITY OF CRIMINAL JUDGMENTS, WITH NECESSARY MODIFICATIONS TO REFLECT THE SITUATIONS OF THE PARTIES AND THEIR CONSTITUTIONAL AND LEGAL REQUIREMENTS. END TEXT VANCE

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